

On July 27, 2000 appellant, then a 57-year-old construction representative, filed an occupational disease claim alleging that he sustained an aggravation of post-traumatic stress

disorder due to factors of his federal employment. He related that he became aware of his condition on March 22, 1968 and related it to his federal employment in June 1999. On the reverse side of the claim form, appellant's supervisor, James A. Nelson, indicated that appellant stopped work on October 20, 1999 as the result of a traumatic injury.

By letter dated November 6, 2000, the employing establishment controverted appellant's claim. An official with the employing establishment related that appellant was "physically removed from his work area" by the police "because of threatening gestures toward his supervisor." The official enclosed a letter of reprimand that appellant received as a result of the incident. The official also enclosed a response from Mr. Nelson denying that he created a hostile work environment. He noted that appellant returned to work part time in February 1999 and full time in March 1999, with limitations resulting from a prior employment injury. Mr. Nelson stated that appellant worked within his restrictions.

In a letter dated November 20, 2000, an official with the employing establishment related that appellant stopped work on October 20, 1999 due to a recurrence of disability under file number 10-0475623. He noted that appellant currently received compensation on the periodic roll.

On January 21, 2002 appellant, through his attorney, indicated that he was diagnosed with paranoid schizophrenia on March 22, 1968 and received a 50 percent disability rating from the Department of Veterans Affairs.<sup>1</sup> Appellant argued that he sustained an aggravation of his condition due to hostile treatment by Mr. Nelson from February through June 1999.

Appellant described events from January 19 to October 18, 1999. He related that on January 29, 1999 as he was dropping off a return to work slip, Mr. Nelson told coworkers in a sarcastic tone that it was a "sighting" of appellant and asked whether they could believe it. On February 10, 1999 appellant told Mr. Nelson that he was glad to be back at work and Mr. Nelson replied that he did not "like brown nosers." Mr. Nelson also told appellant that his coworkers believed that he was "milking" his injury. Appellant then stated that he questioned Mr. Nelson about whether there was an office pool regarding when he would return to work. He further related that Mr. Nelson questioned an unavoidable delay in his starting house inspections and refused to let him use the telephone. On March 8, 1999 Mr. Nelson told appellant that his request for sick leave was not acceptable, questioned why he was unfamiliar with abbreviations on schedule and questioned how he spent his days in a "harassing manner." Mr. Nelson also told him that he was disappointed with his job performance and criticized him for having a magazine in his work truck. Appellant further described an incident in which Mr. Nelson screamed at a contractor on the telephone. He stated that Mr. Nelson gave him a poor performance evaluation on July 29, 1999, denied awareness of his work restrictions and implied that he was using his injury for special treatment. Appellant related that he informed Mr. Nelson that he had filed the wrong claim forms for his injury which had delayed medical treatment. Additionally, on August 2, 1999 Mr. Nelson assigned him projects that violated his work restrictions and, on September 20, 1999 told him that he was "totally incorrect" in front of his coworkers. Appellant also noted that Mr. Nelson took four months to approve a leave request.

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<sup>1</sup> The record contains a rating from the Department of Veterans Affairs dated October 1999, increasing appellant's disability for post-traumatic stress disorder to 70 percent.

In response to appellant's statement, Mr. Nelson related that on October 19, 1999 appellant gave him a medical report stating that he was unable to work for six weeks. He noted that appellant had been performing work within his restrictions and that he had assigned him three new projects which he had not yet begun. Mr. Nelson stated that when he returned from a class on October 19, 1999 appellant left a slip requesting sick leave. He spoke with other managers in an attempt to ascertain from the Office what type of leave appellant should receive. When appellant returned to work on October 20, 1999, Mr. Nelson related:

“[Appellant] was given a blank leave slip and asked to fill it out. I had to tell him several times that he needed to tell us what type of leave he wanted and then go home. At one point he got rather angry and demanded to know in writing why we had reversed direction from the previous day. I explained that Tom [Edwards] and I are not experts and that we were trying to get clarification from his doctor and from DOL [Department of Labor]. I told him that when we got that direction it was clear that he had to elect a type of leave and go home because he had a doctor's slip saying no work. [Appellant] demanded to get an explanation in writing before he would leave. I told him he was welcome to request that, but that he would not receive it before leaving. I apologized for our error, explaining that we had made a mistake but now that we knew better we were correcting that mistake by trying to get a leave slip from him and send him home.”

Mr. Nelson related that appellant became angry that he had not yet signed a leave slip from the previous day. He stated, “[Appellant] came up out of his chair with his right arm cocked like he wanted to throw a punch. He then told me several times in a loud and angry voice to get away from him. He had his right arm up and extended, his right index finger jabbing through the air in my direction.” Mr. Nelson related that he called the police, who requested that appellant leave the building.

In an undated statement, Ronald R. Clark reported that on October 20, 1999 he witnessed appellant talking with Mr. Nelson. He stated that he heard a “loud heated verbal exchange” and that when he looked up he saw appellant “standing with his hands in a boxers position with fist balled up.” Mr. Clark related that the police escorted appellant from the building.

By decision dated January 14, 2002, the Office denied appellant's claim on the grounds that the evidence did not establish an injury in the performance of duty. The Office found that he did not establish any compensable employment factors.

On February 8, 2002 appellant, through his attorney, requested a hearing on his claims. At a hearing held on October 21, 2002, Jane Ziegler, a licensed clinical social worker, related that appellant was a veteran with post-traumatic stress disorder who had been medically discharged from the military with a 50 percent disability for paranoid schizophrenia. She opined that events at work aggravated his post-traumatic stress disorder. Ms. Ziegler related that on March 19, 1998 the employing establishment erroneously filed papers for a recurrence of disability instead of a new injury. She noted that he was not paid after his injury because the Office had not accepted his case and that the reason for the Office's nonacceptance was an incorrect form provided by his supervisor. Ms. Ziegler asserted that the administrative error of filing incorrect papers for appellant's previous compensation claim aggravated his post-traumatic

stress disorder. Appellant described his employment injury on March 10, 1998. He stated that he was not paid from July 8, 1998 to March 1999 because his supervisor had filed the wrong claim form for a recurrence of disability, rather than a continuation of disability. Appellant related that, when he told Mr. Nelson that he had filed the wrong form, he grinned and said that was not his problem. Mr. Nelson also told him that he was “milking” his injury. Appellant asserted that on October 19, 1999 he told Mr. Nelson that his physician found him unable to work for six weeks and Mr. Nelson told him to sit in his cubicle and do nothing. An official with the employing establishment asked him what he could do without hurting himself until it was determined the type of leave he should take. Appellant related that he signed a request for sick leave and left. He returned to work on October 20, 1999 and Mr. Nelson told him to fill out a leave slip and go home. Appellant asked whether he could receive administrative leave since he was being told to go home and also requested that Mr. Nelson sign his leave slip from the prior day. He related that Mr. Nelson yelled at him repeatedly while asking whether he was refusing to leave the building. Appellant related that he grew angry and jumped up. He noted that police escorted him from the building.

The employing establishment submitted a response to the hearing transcript from Timothy J. Hyland, an attorney, dated November 25, 2002. He noted that on October 19, 1999 appellant submitted medical information stating that he could not work and that when he returned to work on October 20, 1999 his supervisors were trying to determine “the DOL rules for [appellant’s] presence under the physician’s absolute prohibition from any work.” Mr. Hyland further contended that the employing establishment had not filed the wrong form for appellant’s prior claim.

On December 18, 2002 appellant’s attorney contended that Mr. Nelson created a hostile work environment. He alleged that, on July 7, 1998, Mr. Nelson filled out paperwork for a recurrence of injury rather than continuation of injury which caused the Office to deny appellant’s claim. The attorney also argued that Mr. Nelson assigned him work outside his restrictions and “intentionally aggravated” him by refusing to sign a leave slip on October 19, 1999 after instructing him “to get leave slips signed before leaving work.”

In a decision dated July 14, 2003, the hearing representative affirmed the January 14, 2002 decision after finding that appellant had not established any compensable factors of employment.

On October 9, 2003 appellant, through his attorney, requested reconsideration, contending that the requirement by the employing establishment, that appellant complete paperwork in order to obtain leave constituted the performance of his job duties and was, therefore, a compensable factor. He also submitted medical evidence.

By decision dated January 16, 2004, the Office denied modification of the July 14, 2003 decision.

### **LEGAL PRECEDENT**

Workers’ compensation law does not apply to each and every injury or illness that is somehow related to an employee’s employment. There are situations where an injury or an

illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>2</sup> On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>3</sup>

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.<sup>4</sup> However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.<sup>5</sup> In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.<sup>6</sup>

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.<sup>7</sup> A claimant must establish a factual basis for his or her allegations with probative and reliable evidence. Grievances and Equal Employment Opportunity complaints by themselves do not establish that workplace harassment or unfair treatment occurred.<sup>8</sup> The issue is whether the claimant has submitted sufficient evidence under the Act to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>9</sup> The primary reason for requiring factual evidence from the claimant is support of his or her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.<sup>10</sup>

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<sup>2</sup> 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>4</sup> See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 556 (1991).

<sup>5</sup> See *William H. Fortner*, 49 ECAB 324 (1998).

<sup>6</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>7</sup> See *Michael Ewanichak*, 48 ECAB 364 (1997).

<sup>8</sup> See *Charles D. Edwards*, 55 ECAB \_\_\_\_ (Docket No. 02-1956, issued January 15, 2004); *Parley A. Clement*, 48 ECAB 302 (1997).

<sup>9</sup> See *James E. Norris*, 52 ECAB 93 (2000).

<sup>10</sup> *Beverly R. Jones*, 55 ECAB \_\_\_\_ (Docket No. 03-1210, issued March 26, 2004).

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>11</sup> If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.<sup>12</sup>

### **ANALYSIS**

Appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. The Office denied his emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must, therefore, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant has not alleged that he developed an emotional condition due to the performance of his regular or specially assigned duties or out of a specific requirement imposed by his employment. Rather, he attributed his condition to harassment by Mr. Nelson. The Board has held that to the extent that incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.<sup>13</sup> However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that the harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.<sup>14</sup> Appellant alleged that Mr. Nelson treated him as if he was "milking" an employment injury, told him that he did not like "brown nosers," joked about a "sighting" of appellant after he had been off work due to his employment injury and questioned him about his work duties and accomplishments in a hostile manner. He also told him that he was "totally incorrect" in front of coworkers. Mr. Nelson, however, denied harassing appellant or creating a hostile work environment. Appellant has not provided sufficient evidence, such as witness statements, to establish that the alleged harassment actually occurred.<sup>15</sup> Allegations alone are insufficient to establish a factual basis for an emotional

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<sup>11</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>12</sup> *Id.*

<sup>13</sup> *Marguerite J. Toland*, 52 ECAB 294 (2001).

<sup>14</sup> *Reco Roncaglione*, 52 ECAB 454 (2001).

<sup>15</sup> *See William P. George*, 43 ECAB 1159, 1167 (1992).

condition claim.<sup>16</sup> The Board, therefore, finds that appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

Regarding the verbal altercation between appellant and Mr. Nelson on October 20, 1999 the Board has recognized the compensability of verbal altercations and abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.<sup>17</sup> Verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute compensable factors of employment.<sup>18</sup> In this case, appellant alleged that on October 20, 1999 Mr. Nelson yelled at him three times asking whether he was refusing to leave the building. A coworker, Mr. Clark, stated that he overheard a “heated verbal exchange” between appellant and Mr. Nelson. The record indicates that both appellant and Mr. Nelson spoke in tones that allowed others to overhear their conversation. The mere fact that his supervisor raised his voice during the course of the conversation with appellant is insufficient to warrant a finding that his actions amounted to verbal abuse.<sup>19</sup> It further appears from the record that appellant escalated the verbal exchange with physical gestures made at his supervisor. He has not shown how loud questions regarding whether he was refusing to leave the building would rise to the level of verbal abuse. Thus, appellant has not established a compensable employment factor.

Regarding appellant’s allegations that the employing establishment mishandled his previous compensation claim, the Board has generally held that the processing of compensation claims bears no relation to day-to-day or specially assigned duties.<sup>20</sup> Although the handling of a compensation claim is generally related to the employment, it is an administrative function of the employer and not a duty of the employee and thus, not compensable absent evidence of error or abuse by the employer.<sup>21</sup> Appellant maintained that his supervisor filed the wrong forms which caused a delay in him receiving compensation from the Office; however, the employing establishment denied filing an incorrect form and he has submitted no evidence in support of his allegation of error by the employing establishment in handling his compensation claim. Thus, he has not established a compensable employment factor.

Appellant also contended that his supervisor erroneously handled leave requests and intentionally refused to sign his October 19, 1999 leave slip. He further asserted that filling out the paperwork necessary to obtain leave constituted the performance of his assigned duties and thus, is compensable under the Act. Generally, actions of the employing establishment in

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<sup>16</sup> See *Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant’s allegations of unfair treatment to determine if the evidence corroborated such allegations).

<sup>17</sup> *Harriet J. Landry*, 47 ECAB 543 (1996).

<sup>18</sup> *Marguerite J. Toland*, *supra* note 13.

<sup>19</sup> *Carolyn S. Philpott*, 51 ECAB 175 (1999).

<sup>20</sup> See *George A. Ross*, 43 ECAB 346 (1991).

<sup>21</sup> *Janet L. Terry*, 53 ECAB \_\_\_\_ (Docket No. 00-1673, issued June 5, 2002).

matters involving the use of leave are not considered compensable factors of employment as they are administrative functions of the employer and not duties of the employee.<sup>22</sup> Approving or denying a leave request is an administrative function of a supervisor.<sup>23</sup> An administrative or personnel matter will be considered to be an employment factor where the evidence discloses evidence of error or abuse.<sup>24</sup> In this case, appellant has submitted no evidence to establish any error or abuse in the employing establishment's handling of his leave request. Regarding Mr. Nelson's alleged refusal to sign appellant's October 19, 1999 leave request, it appears from the record that at that time appellant was refusing to sign a leave slip as requested by his supervisor. He has not submitted any evidence to establish that Mr. Nelson acted unreasonably with respect to leave matters.<sup>25</sup>

Regarding appellant's allegation that Mr. Nelson was dissatisfied with his performance and gave him a poor evaluation, the Board has characterized supervisory discussions of job performance and reprimands as administrative or personnel matters of the employing establishment, which are covered only when a showing of error or abuse is made.<sup>26</sup> The record contains no evidence that Mr. Nelson acted unreasonably in rating his performance and thus, has not established a compensable factor of employment.

Appellant also maintained that Mr. Nelson assigned him work outside his restrictions. The Board has held that being required to work beyond one's physical limitations could constitute a compensable employment factor if the record substantiated such activity.<sup>27</sup> Mr. Nelson, however, denied that appellant worked outside his restrictions. Appellant argued that he was assigned new projects that he believed violated his limitations but there is no evidence that he actually began work on the projects prior to stopping employment on October 20, 1999 or that the assigned projects were outside his restrictions. Thus, he has not established the required factual basis for his allegations.

On appeal appellant's attorney argues that, pursuant to *Pasquale Frisina*,<sup>28</sup> completing paperwork to receive leave constitutes the performance of appellant's job duties. In *Anthony A.*

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<sup>22</sup> *Judy L. Kahn*, 53 ECAB \_\_\_\_ (Docket No. 00-457, issued February 1, 2002); *Michael A. Salvato*, 53 ECAB \_\_\_\_ (Docket No. 01-1790, issued July 16, 2002); *Joseph C. DeDonato*, 39 ECAB 1260 (1988); *Ralph O. Webster*, 38 ECAB 521 (1987). The Board's decisions in *Webster* and *DeDonato*, which held that actions taken by the employing establishment in use of leave situations is a personnel matter and does not arise within the performance of duty, effectively overruled the Board's decision in *Pasquale Frisina*, 34 ECAB 1230 (1983), which found the procedure for reporting sick leave to be a requirement imposed by the employment.

<sup>23</sup> *Beverly R. Jones*, 55 ECAB \_\_\_\_ (Docket No. 03-1210, issued March 26, 2004).

<sup>24</sup> *Lori A. Facey*, 55 ECAB \_\_\_\_ (Docket No. 03-2015, issued January 6, 2004).

<sup>25</sup> In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably. *Brian H. Derrick*, 51 ECAB (2000).

<sup>26</sup> *Kim Nguyen*, 53 ECAB \_\_\_\_ (Docket No. 01-505, issued October 1, 2001); *Roger W. Robinson*, 54 ECAB \_\_\_\_ (Docket No. 03-348, issued September 30, 2003).

<sup>27</sup> *Janet A. White*, 54 ECAB \_\_\_\_ (Docket No. 02-1559, issued December 10, 2002).

<sup>28</sup> *Supra* note 22.



*Zarcone*, the Board expressly overruled *Pasquale Frisina*, which found the procedure for reporting sick leave to be a requirement imposed by the employment.<sup>29</sup> The remaining allegations on appeal, that appellant was harassed, assigned work outside his restrictions and that the employing establishment erred in filing papers in connection with his workers' compensation claim, have been addressed by the Board in this decision. The medical evidence need not be addressed as appellant has not established any compensable employment factors.<sup>30</sup>

### **CONCLUSION**

The Board finds that appellant has not established that he sustained an emotional condition in the performance of duty as he failed to establish any compensable factors of employment. As he did not establish any compensable employment factors, the medical record need not be addressed.<sup>31</sup>

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated January 16, 2004 and July 14, 2003 are affirmed.

Issued: January 19, 2005  
Washington, DC

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>29</sup> 44 ECAB 751 (1983); *see also Isabel Apostol Gonzales*, 44 ECAB 901 (1993).

<sup>30</sup> *Roger Williams*, 52 ECAB 468 (2001).

<sup>31</sup> *Id.*